IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMARY SUIT NO.2754 OF 2005

Bhusan Harishchandra Wade. ... Plaintiff.

Vs.

Borivli Hari Om Co-operative Housing Society Ltd. ...Defendant.

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Ms.Pratima Soundalkar i/b. J.R. Vakil & Asso. for the Plaintiff.
None for the Defendant.

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CORAM : DR.D.Y.CHANDRACHUD, J.
4th June 2007.

P.C.:

The suit under Order 37 of the Code of Civil Procedure, 1908, is for recovery of an amount of Rs.3,35,572/- together with interest. In pursuance of the quotations invited by the Defendant for carrying out structural and other repairs to the building owned by the Defendant, the Plaintiff submitted a tender. An agreement was entered into between the parties on 12th February 2002. Five per cent of the amount due and payable under every bill, was liable to be retained as retention money until the defect liability period was over. The Defendant had appointed a Civil Engineer for certifying the work done by the Plaintiff. The Plaintiff submitted a final bill for Rs.25,40,357.78 which is duly certified by the Consulting Engineer of the Defendant on 16th December 2002. An

amount of Rs.1,27,017/- was deducted towards the retention money. According to the Plaintiff, upon the expiry of the defect liability period, on 7th September 2003, the aforesaid amount was due and payable. In addition, a balance of Rs.2,71,803.78 was due and payable by the Defendant under the final bill of which Rs.60,000/- was paid leaving a balance of Rs.2,10,079/-. A completion certificate was issued by the Defendant's Consulting Engineer on 8th September 2002. By a letter dated 16th December 2002, the Defendant's Consulting Engineer has certified that an amount of Rs.2,71,803/- was due and payable. The claim of the Plaintiff is in an amount of Rs.3,35,625/-. This comprises of an amount of Rs.2,08,555/- being the balance due under the final bill and Rs.1,27,017/- being the retention amount deducted by the Defendant. The Consulting Engineer has, on 20th October 2003, called upon the Defendant to release the amount of retention money since the defect liability period was over. A notice of demand was addressed by the Plaintiff on 22nd December 2003 which was replied to by the Defendant on 3rd January 2004.

In para 16 of the plaint, it has been averred that in the balance sheet of the Defendant for the years ending 31st March

2003, 31st March 2004 and 31st March 2005, the Defendant has acknowledged the liability in the amount of Rs.1,27,017/- to the Plaintiff on account of retention money and a further amount of Rs.2,08,555/-. Copies of the audited report for the years 2003-04 and 2004-05 have been placed on the record.

The Defendant has not filed a Written Statement despite service of the Writ of Summons. An affidavit of service has been filed. The Defendant not having entered appearance and not having filed any defence, the Plaintiff will be entitled to a decree under Order 37 of the Code of Civil Procedure, 1908. Even otherwise, the claim of the Plaintiff has been duly proved on the basis of the original documents which are tendered and taken on record. The claim of the Plaintiff has been duly acknowledged by the Defendant and falls within the purview of Order 37. The suit shall accordingly stand decreed in terms of prayer clause (a) with the modification that the Plaintiff will be entitled to interest at the rate of 9% per annum from the date of the suit, until payment or realisation.

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